

HONOURABLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

and

HONOURABLE SRI JUSTICE R.SUBHASH REDDY

Writ Appeal Nos.1088 and 1699 of 2005

-

Writ Appeal No.1088 of 2005

-

Between:

Sri A. Sai Kumar, S/o.a.Ranganatham,
H.No.1/125, Near Railway Station, Kadapa Dist., A.P.

..... APPELLANT

AND

The Govt. of Andhra Pradesh represented by its
Principal Secretary, Industries & Commerce Department,
Secretariat, Hyderabad and others.

... RESPONDENTS

Counsel for the Appellant : Mr. .P. Veera Reddy

Counsel for the Respondents 1 : Government Pleader for Mines & Geology

Counsel for Respondent No.2 : Ms. N. Shoba

Writ Appeal No.1699 of 2005

Between:

M/s.Ashok Minerals, rep. by its Director, A. Ashok Kumar,
S/o A. Ranganadhan, R/o 1/1940, Krishnappa Nagar,
Railway Station, Kadapa District. .. Appellant

And

1. A. Sai Kumar S/o A. Ranganatham
R/o H.No.1/125, Near Railway Station
Kadapa and others
2. The Government of Andhra Pradesh
Represented by its Principal Secretary,
Industries & Commerce Department, Secretariat,
Hyderabad.

.... Respondents .

::COMMON JUDGMENT::

Counsel for the Appellant : Ms. N. Shoba

Counsel for the Respondents 1 : Government Pleader for Mines &
Geology

Counsel for Respondent No.2 : Mr. P. Veera Reddy.

26th December, 2005

Per G.S. Singhvi, CJ

These appeals are directed against order-dated 19.4.2005 passed by the learned Single Judge in Writ Petition No.19281 of 2004. While A. Sai Kumar (appellant in Writ Appeal No.1088 of 2005) has prayed for modification of the order under challenge in so far as the learned Single Judge did not quash the grant of mining lease in favour of M/s Ashok Minerals, the latter has filed Writ Appeal

No.1699 of 2005 for quashing the order of the learned Single Judge who allowed the writ petition filed by Sri A. Sai Kumar and remanded the revision filed by him to the Central Government for fresh adjudication.

For deciding the issues arising in the appeals, we may briefly notice the facts.

In pursuance of notification dated 28.12.1992 issued by the Government of Andhra Pradesh, the appellants and one

Mr. A. Amarnath submitted their respective applications for grant of mining lease for baryte in Survey No.288/45 of village V. Kothapalli. After scrutiny, Assistant Director of Mines and Geology recommended the case of Mr. A. Sai Kumar for grant of mining lease. Deputy Director of Mines and Geology and Director of Mines and Geology also made similar recommendations. The competent authority accepted these recommendations and granted mining lease to Sri A. Sai Kumar vide order dated 1-12-2000. Simultaneously, the application of M/s. Ashok Minerals was rejected. The latter challenged that order by filing revision petition before the Central Government under Section 30 of Mines and Minerals (Development and Regulation) Act, 1957 (for short 'the Act'), which was allowed by the revisional authority and the case was remanded to the State Government for fresh consideration of the applications. After hearing the appellants, the State Government vide its order-dated 29.11.2003 rejected the application of

A. Sai Kumar and granted mining lease to M/s Ashok Minerals.

A. Sai Kumar challenged that order before the Central Government. The revision petition filed by him was dismissed by the Central Government vide order dated 5.10.2004, the relevant extract of which is reproduced below:

“Heard the arguments of all the parties and also gone through the records. It is evident from the impugned order that the petitioner has been given opportunity of hearing under Rule 26(1) of MCR, 1960 before deciding the application of the petitioner. The State Govt., has statedly taken the decision in accordance with the provision of Section 11(3) of the Act. We, therefore, upheld the order of the State Government and Revision Application is therefore rejected.”

Sri A. Sai Kumar then filed Writ Petition No.19281 of 2004 with the prayer that orders dated 29-11-2003 and 5-10-2004 passed by the State Government and the Central Government respectively be quashed and the former may be directed to grant lease

to him.

The learned Single Judge referred to the decisions of the Supreme Court in **Bhagat Raja v. Union of India**, **Travancore Rayons v. UOI** and of this Court in **R.B.Seth Shreeram Durgaprasad v. Secretary, Government of India** and held that the reasonless order passed by the Central Government is liable to be treated as vitiated due to violation of principles of natural justice.

Sri P. Veera Reddy, learned counsel for Sri A. Sai Kumar submitted that in view of the conclusion recorded by him that the revisional order was vitiated due to violation of the rules of natural justice, the learned Single Judge should have quashed grant of lease in favour of M/s.Ashok Minerals and remanded the matter to the State Government for fresh consideration of all the applications.

Mrs.N. Shobha, learned counsel for M/s.Ashok Minerals argued that the decision of the State Government to grant lease in favour of her client was legally correct and the revisional order passed by the Central Government could not have been nullified only on the ground of lack of reasons.

We have given serious thought to the arguments of the learned counsel. In our opinion, the order under challenge does not suffer from any error warranting interference under Article 226 of the Constitution. It is well settled that every judicial, quasi judicial and even an administrative authority entrusted with the task of deciding lis between the parties or passing an order which affects the rights, interest or status of a person must not only record reasons in support of its conclusions, but such reasons should be communicated to the affected person. The requirement of recording reasons by judicial, quasi-judicial and even administrative authorities and communication thereof to the affected persons has been highlighted and reiterated in various judgments of the Supreme Court including the often referred decisions in **Harinagar Sugar Mills v. Shyam Sundar**, **M.P.Industries Limited v. Union of India**, **Bhagat Raja v. Union of India**, **Mahavir Prasad Santoshkumar v. State of U.P.**, **Travancore Rayons v. UOI**, **Messrs Ajanta Industries v. Central Board of Direct Taxes**, **New Delhi**, **Messrs Siemens Engineering & Manufacturing Company v. Union of India**, **S.N. Mukherjee v. Union of India**, **Charan Singh v. Healing Touch Hospital State of Punjab v. Bagh Singh**, **State of Orissa v. Dhaniram Luhar**, **State of Rajasthan v. Sohan Lal**, **Cyril Lasrado v. Juliana Maria Lasrado**, **Mangalore**

Ganesh Beedi Works v. CIT and Manorama Sachan v. Lucknow Development Authority.

In **S.N. Mukherjee v. Union of India** ^(8 supra) the Constitution Bench of the Supreme Court noticed the legal position obtaining in Australia, England, United States of America, referred to a large number of judicial precedents on the subject and laid down the following proposition:

“... Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U. S. A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.”

In **State of Punjab v. Bagh Singh** ^{10 (supra)} the Supreme Court observed:

“Reasons introduce clarity in an order. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The “inscrutable face of a sphinx” is ordinarily incongruous with a judicial or quasi-judicial performance.”

In **State of Rajasthan v. Sohan Lal**¹² (supra) the Supreme Court while dealing with the question whether the High Court was required to assign reasons for recording reasons while disposing of petitions filed under Section 378 (3) Cr.P.C. observed:

“The hallmark of a judgment/order and exercise of judicial power by a judicial forum is to disclose the reasons for its decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. ... The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know of the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind. All the more so, when refusal of leave to appeal has the effect of foreclosing once and for all a scope for scrutiny of the judgment of the trial court even at the instance and hands of the first appellate court. ...”

In **Cyril Lasrado v. Juliana Maria Lasrado**¹³ (supra) the Supreme Court considered the same question and held as under:

“... Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The “inscrutable face of the sphinx” is ordinarily incongruous with a judicial or quasi-judicial performance.”

In **Testeels Limited v. N.M. Desai, Conciliation Officer and another**, a Full Bench of the Gujarat High Court speaking through P.N. Bhagwati,CJ, as his Lordship then was, made a lucid exposition of law on the subject and highlighted the necessity of passing a speaking order by quasi judicial authorities in the following

words.

“There are two strong and cogent reasons why we must insist that every quasi-judicial order must disclose reasons in support of it. The necessity of giving reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of our constitutional set-up. Our Constitution posits a welfare State in which every citizen must have justice—social, economic and political and in order to achieve the ideal of welfare State, the State has to perform several functions involving acts of interferences with the free and unrestricted exercise of private rights. The State is called upon to regulate and control the social and economic life of the citizen in order to establish socio-economic justice and remove the existing imbalance in the socio-economic structure. The State has, therefore, necessarily to entrust diverse functions to administrative authorities which involve making of orders and decisions and performance of acts affecting the rights of individual members of the public. In exercise of some these functions, the administrative authorities are required to act judicially. Now what is involved in a judicial process is well settled and as pointed out by Shah J. in *Jaswant Sugar Mills’s case*, AIR 1963 SC 677 *supra*, a quasi-judicial decision involves the following three elements:

1. It is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rules;
2. It declares rights or imposes upon parties obligations affecting their civil rights; and
3. The investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of material if a dispute be on question of fact, and if the dispute be on question of law, on the presentation, of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact.

Another reason of equal cogency which weighs with us in spelling out the necessity for giving reasons is based on the power of judicial review which is possessed by the High Court under Article 226 and the Supreme Court under Article 32. The High Court under Article 226 and the Supreme Court under Article 32 have the power to quash by certiorari a quasi-judicial order made by an administrative officer and this power of review exercisable by issue of certiorari can be effectively exercised only if the order is a speaking order and reasons are given in support of it. If no reasons are given, it would not be possible for the High Court or the Supreme Court exercising its power of judicial review to examine whether the administrative officer has

made any error of law in making the order. It would be the easiest thing for an administrative officer to avoid judicial scrutiny and correction by omitting to give reasons in support of his order. The High Court and the Supreme Court would be powerless to interfere so as to keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress being available to the citizen, there would be insidious encouragement to arbitrariness and caprice. The power of judicial review is a necessary concomitant of the rule of law and if judicial review is to be made an effective instrument for maintenance of the rule of law, it is necessary that administrative officers discharging quasi-judicial functions must be required to give reasons in support of their orders so that they can be subject to judicial scrutiny and correction.”

Although, the learned Single Judge did not refer to the aforementioned judgment of the Full Bench of Gujarat High Court, he rightly relied on two judgments of the Supreme Court in Bhagat Raja’s case (cited supra-1) and Travancore Rayons’ case (cited supra-2) and one judgment of this Court in R.B. Seth Shreeram Durgaprasad’s case (Cited supra-3), for coming to the conclusion that the order passed by the Central Government was totally devoid of reasons and did not satisfy the test of a speaking order. The use of the stock phrases and expressions in the revisional order passed by the Central Government cannot be a substitute of the requirement of recording of reasons. In our view, the failure of the revisional authority to direct its attention to the points raised in the revision petition filed by Sri A. Sai Kumar afflicted the revisional order with a patent illegality and the learned Single Judge did not commit any error by quashing the same.

However, we do not find any merit in the argument of Sri P. Veera Reddy that the lease granted in favour of M/s. Ashok Minerals should be nullified by the learned Single Judge. Once the learned Single Judge came to the conclusion that the order passed by the revisional authority was vitiated due to violation of the rules of natural justice, the only course open to him is to nullify that order and remit the case for fresh decision. This is precisely what has been done by the impugned order. Therefore, we do not see any reason to issue a direction for cancellation of the lease of M/s. Ashok Minerals.

For the reasons mentioned above, the appeals are dismissed.

At this stage, learned counsel for the parties jointly made a request that the Court may direct the revisional authority to decide the revision within a specified

time frame. This request of the learned counsel is reasonable and is accepted. Accordingly, the revisional authority is directed to decide the revision petition of Sri A. Sai Kumar within two months from the date of submission/receipt of certified copy after giving reasonable opportunity of hearing to both sides.

G.S. SINGHVI, CJ

Date: 26th December, 2005

R. SUBHASH REDDY, J

Pnb / vtv / svs